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IN THE

Supreme Court of the United States

October Term, 1959

No. 879

WILLIAM WOLD and MAUDE WOLD, *Petitioners,*

v.

SHORELINE SCHOOL DISTRICT NO. 412, and THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, JUVENILE COURT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Petitioners William Wold and Maude Wold seek, by this petition, to obtain a review of the judgment of the Supreme Court of the State of Washington. This judgment in part reversed the judgment of the Juvenile Court of the Superior Court of the State of Washington for King County (hereinafter referred to as Juvenile Court), and in part affirmed the judgment and prior orders of the Juvenile Court. The judgment sought to be reviewed became final on January 25, 1960, upon the denial of a petition for rehearing.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington (hereinafter referred to as Washington Supreme Court) was rendered *en banc* by a decision of

5 to 4. It has not yet been officially reported, but is unofficially reported in 155 Wash. Dec. 175, 346 P.(2d) 999 (1959), and is annexed hereto as Appendix A. The opinion of Judge Royal of the Juvenile Court was not officially reported, but is annexed hereto as Appendix C. The denial of the Petition for Rehearing was without opinion (155 Wash. Dec. 638, 346 P.(2d) 999).

GROUNDS UPON WHICH JURISDICTION IS INVOKED

Petitioners are taxpayers and are the natural parents of Alta Lee Wold, an infant presently 14 years of age, and Freda Mae Wold. In March, 1955, Alta Lee and her sister, Freda Mae, ceased to attend their respective public schools within Respondent's school system because of religious conflicts, and at all times since have been and now are being educated by their mother, Maude Wold, in the Wold home.

Upon the petition of Leo Breuer, director of special education for Respondent School District, the Juvenile Court assumed jurisdiction over Alta Lee and Freda Mae, and Judge Long, of the Juvenile Court, by order made and entered on August 8, 1955, found both girls to be dependent and delinquent because of truancy, found Petitioners to be guilty of contributing to the dependency and delinquency of the children, and deprived Petitioners of their legal custody of the children. The physical custody of the children was left in Petitioners on the condition that, prior to September 1, 1955, Petitioners provided

the children with a method of education conforming to State law.

On September 2, 1955, Petitioners filed notice of appeal to the Washington Supreme Court from Judge Long's order, acting pro se (Tr. 34).

On September 19, 1955 Judge Long made and entered an order continuing the case "subject to call" (Tr. 35).

By order of the Washington Supreme Court, made and entered on January 18, 1956, Petitioners' appeal was dismissed (Finding VI; Tr. 50). In the State of Washington there is no provision for the appeal of orders of the Juvenile Court, and a review may be obtained only by certiorari or prohibition. *In re a Minor*, 39 Wn.(2d) 744, 238 P.(2d) 914 (1951).

The case remained dormant until subsequent petitions by Martin Falsberg and Leo W. Breuer brought it on for review on March 20, 1958. At the beginning of the hearing before Judge Royal, of the Juvenile Court, the legal custody of Freda Mae Wold was restored to Petitioners, she then being 16 years, and no longer subject to compulsory school attendance (St. 1-2). The trial proceeded as to Alta Lee. On May 20, 1958, Judge Royal made and entered Findings of Fact, Conclusions of Law and a Judgment, finding in substance that Petitioners' children had left school because of religious conflicts, and concluding that the condition contained in Judge Long's order of August 8, 1955, had been fully complied with in that Petitioners had furnished Alta Lee Wold with a method of education conforming to State law. The judg-

ment provided that Alta Lee Wold would remain a ward of the Juvenile Court, but that physical custody would remain in Petitioners on the condition that they continued to provide a method of education conforming to State law (App. B). Judge Royal also found and concluded that the method of education furnished by Petitioners did conform to State law, since there were no fixed standards applicable to private schools, and since the textbooks, teaching methods, and other matters provided by Maude Wold were at least equal to those furnished by the Respondent School District (Tr. 51-54).

Respondent School District sought and received from the Washington Supreme Court a review of the judgment by certiorari. The judgment of the Washington Supreme Court, made and entered on December 3, 1959, becoming final on January 25, 1960, provided as follows:

> "The judgment of the trial court is affirmed in the following particulars: Alta Lee Wold is a dependent child because she is in violation of the compulsory school attendance act, and will remain a ward of the Court until such time as she is purged of delinquency by attendance at either a public or qualified private school.
>
> "The judgment is reversed as to that portion thereof which adjudicates the Wold home school to be a method of education which conforms with State law."

This decision deprives Petitioners of the right of physical custody of Alta Lee Wold unless she is enrolled in a public or qualified private school, and affirms the deprivation of legal custody.

Petitioners timely filed their Petition for Rehearing (Tr. 74) which was denied without opinion on January 25, 1960. The judgment of the Washington Supreme Court thereupon became final on that date. Rules 9 and 50, Rules on Appeal, Washington Court Rules (App. G); *In re Brown*, 6 Wn.(2d) 215, 101 P.(2d) 1003, 107 P.(2d) 1104 (1940).

This Court has jurisdiction to review the judgment of the Washington Supreme Court under 28 USC Sec. 1257(3). The final judgment of the highest court of the State of Washington, acting *en banc*, has denied to Petitioners and to Alta Lee Wold a right and privilege specially set up and claimed under the United States Constitution, to wit, the right and privilege of freedom in religious matters as provided in the First Amendment, and as applied to State action by means of the Fourteenth Amendment.

THE QUESTIONS PRESENTED

The dominating issue is whether or not Alta Lee Wold was legally justified in withdrawing from public school, or in refusing to attend public school after her withdrawal, by reason of the nature of the religious conflict and by reason of the conduct of the agents of the Respondent School District. This issue necessarily includes the following questions:

1. May the order of Judge Long of August 8, 1955, be reviewed by this Court?

2. What legitimate interest, if any, does the State of

Washington have in the following topics?

Topic A: The length of a student's hair.

Topic B: Teaching folk dancing.

Topic C: The place where a student eats lunch.

Topic D: Vegetarianism.

Topic E: The teaching of musical instruments.

3. If the State of Washington does have a legitimate interest in any of the above topics, does that interest outweigh the right of freedom of conscience provided in the First Amendment?

4. Did the conduct of the teachers and principals of Respondent School District, in this case, constitute State action?

Does criticism and discipline by public school authorities of a public school student with regard to conscientious religious beliefs constitute an illegal overreaching or deprivation of freedom of conscience?

5. Were petitioners' children legally justified in withdrawing from their schools because of State deprivation of their right of freedom of conscience?

CONSTITUTIONAL PROVISIONS

Amendment I—Freedom of Religion.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *" U.S.C., Vol. 1, p. XLIV.

Amendment 14.

"* * * nor shall any State deprive any person of life, liberty or property, without due process of law; * * *" U.S.C., Vol. 1, p. XLV.

STATEMENT OF THE CASE

The evidence in this case is generally not in dispute, as it relates to the constitutional issues.

In August, 1952, the petitioners and their daughters moved from Colorado to Seattle, Washington. At that time Alta Lee Wold was 7 years old and Freda Mae Wold was 10 years old. Alta Lee and Freda Mae attended a Seattle public school for the first year (Finding II, Tr. 49). In October, 1953, the family moved outside Seattle and the children began to attend schools of Respondent School District (Finding III, Tr. 49). RCW 28.27.010, applicable to Respondent School District, requires all children to attend a public or private school until the age of sixteen (App. F).

Petitioners had moved to this area from Colorado because they had become interested in the Seventh Elect Church in Spiritual Israel, and in March, 1953, they joined that church. This church exists only within King County, Washington (Finding II, Tr. 49). In September, 1954, Alta Lee and Freda Mae also joined the church. After joining the church, the girls began to practice all of the tenets of the church (Finding IV, Tr. 49). These principles, as they are applicable to the facts of this case, are as follows:

1. Members of the church may not eat any form of flesh or any hot spices.

2. They may not cut their hair.

3. They may not play or listen to musical instru-

ments, including reproductions thereof.

4. They may not dance.

5. They may not remain in the presence of a person who is eating any of the forbidden dishes.

These teachings are adhered to by the entire family (Finding IV, Tr. 49).

Shortly after Alta Lee and Freda Mae joined the church, they began to experience a series of difficulties in school, by reason of their religious beliefs. The trial judge found as follows (Tr. 50):

> "Finding of Fact V. Based upon the foregoing beliefs, a whole series of difficulties arose by reason of the girls' attendance in the public schools of their school district. They found it extremely difficult to find a suitable eating place during the lunch hour where other children were not eating meat in their presence. There was some folk dancing featured in physical education class in which they could not participate. They were subjected to the jibes of their classmates *and disciplined by their teachers because of their refusal to participate in various activities.* Finally, in March, 1955 the girls left their respective public schools and began to be educated at home" (Emphasis supplied).

In particular Freda Mae Wold was punished for refusing to participate in the folk dancing classes after Maude Wold requested that she be excused (St. 49, 50). Her teacher would not excuse her (St. 49). She was required to eat her lunch in the girls' restroom because the principal would not permit her to eat in any place other than the school lunchroom or the girls' restroom (St. 50-52).

Alta Lee was compelled to eat her lunch in the lunchroom because the school would make no other arrangements (St. 52). Freda Mae's teacher criticized her for not cutting her hair (St. 49). This conduct by the school occurred even after Maude Wold advised the teachers and principal of the problems involved (St. 49-52). Maude Wold testified that Mr. Breuer, Director of Special Education for Respondent School District (St. 2), consented that the girls be withdrawn from their schools because of the religious conflicts, and agreed that Petitioners could set up their own private home school if the girls were provided with a method of education equivalent to that of Respondent School District (St. 53, 54, 101). Subsequently, the girls left school. Maude Wold thereupon purchased books and school equipment and began to instruct the girls at home. Shortly after this Mr. Breuer changed his mind and advised Mrs. Wold that she could not teach the girls at home, since Respondent School District did not want another parochial school in the district (St. 101, 102). Maude Wold continued with her home school. Considerable planning and effort were put into this program.

In May, 1955 Mr. Breuer petitioned the Juvenile Court to iriquire into the matter of the non-attendance of Freda Mae and Alta Lee (Tr. 22). A hearing was held on June 1, 1955, and on August 8, 1955, Judge Long entered an order finding that Alta Lee and Freda Mae were dependent and delinquent children, that Petitioners were guilty of contributing to their delinquency, and that the chil-

dren should be made wards of the Court. The order further found that the children should be removed from the custody of the Petitioners unless prior to September 1, 1955, they were furnished with a method of education conforming to State law (App. D).

On September 2, 1955, petitioners filed notice of appeal and on September 19, 1955, Judge Long entered his Order continuing the case subject to call (Tr. 35). Petitioners' appeal was dismissed as heretofore stated.

After the hearing of June 1, 1955, Maude Wold improved her home school program by adding civics, history, biology and current events (St. 104). The education of the girls in the home school has continued from the original withdrawal up to the present time. This program was highly successful, as testified by Solomon Birulin, an expert witness employed as a teacher by the Seattle School system. This testimony showed that the textbooks and the methods used by Maude Wold were at least equal to those used throughout the State of Washington (St. 149-161). The result of Maude Wold's efforts was such that Alta Lee was doing the work of a superior student for her grade level (St. 162-166). Based upon Mr. Birulin's testimony, the trial judge made Finding of Fact VIII (Tr. 51), in which he summarized that the method of education provided in the Wold home school was equal, if not superior, to that used in many of the public school districts in the State of Washington. Judge Royal concluded that the condition contained in the decretal portion of Judge Long's order of August 8, 1955 (that physical cus-

tody of the girls should remain in Petitioners if they furnished a method of education conforming to State law) had been fully complied with, inasmuch as Alta Lee was receiving as good or better an education at home, and inasmuch as there were no fixed State standards for private schools (Conclusions of Law II, III, IV and V, Tr. 53-55). Judge Royal decreed that Alta Lee Wold would remain a ward of the Court, in the temporary physical custody of petitioners, so long as they continued to furnish her with such an education (Judgment, App. B).

The Federal questions sought to be reviewed were raised in both of the Juvenile Court hearings and before the Washington Supreme Court. In Juvenile Court proceedings in the State of Washington there is no requirement for a written answer, and there was no written answer in this case. The only pleadings were the petitions filed by Mr. Breuer and by Mr. Falsberg, a Juvenile Court official (Tr. 22, 23, 37-40), together with the citations issued by the Juvenile Court. During the course of both proceedings the Petitioners maintained by their testimony that Alta Lee and Freda Mae had withdrawn from school because of religious conflicts brought about by the conduct of the school authorities, and Finding of Fact V so finds (Tr. 50). The Federal questions were also before the Washington Supreme Court. It should be noted initially that it was the Respondent and not the Petitioners who sought review by the Washington Supreme Court. Petitioners had retained physical custody of Alta Lee and would have had no standing to

object to that portion of the judgment. The Respondent School District raised the constitutional issue in its brief, saying (Tr. 87, Brief of Relator, p. 31):

> "The reasons for which the children were withdrawn from school are religious, and while there is no question that the Wold family is sincere in their beliefs,
>
> "'Religious liberty includes absolute right to believe, but only limited right to act.' *Commonwealth v. Beiler*, 79 Atl. 2d 134 at 137 (Penn. 1951)."

Petitioners, in their brief, argued that truancy was not a ground upon which the State could acquire jurisdiction of a minor, when the "truancy" was founded upon sincere religious beliefs (Tr. 88, Brief of Respondent, p. 43).

In any event, the Washington Supreme Court discussed the defense, and ruled upon the issue, holding invalid the Petitioner's contention that they were excused from the penalties of compulsory school attendance because of the religious conflicts. Where the highest court of a state rules upon a Federal question, and the ruling is necessary to dispose of the case, the Federal question may be reviewed by this Court. *Whitfield v. Ohio*, 297 U.S. 431, 56 S. Ct. 532, 80 L.Ed. 778 (1936).

ARGUMENT

1. The order of Judge Long may be reviewed by this Court.

Judge Long's order of August 8, 1955, deprived Petitioners of the legal custody of Alta Lee and Freda Mae by making them wards of the Court, but granted to Petitioners the temporary physical custody of the girls on the condition that the Petitioners provided a method of education, prior to September 1, 1955, conforming to State law. Following the notice of appeal, Judge Long entered, on September 19, 1955, an order continuing the matter subject to call. The case thereafter remained dormant for more than two years. Judge Long's original order was conditional, and there was no adjudication until the judgment of Judge Royal, entered May 20, 1958, as to whether or not the condition embodied in Judge Long's original order was being complied with. An adjudication was necessary, for upon that question turned the right of Petitioners to retain physical custody. Since the issue was both factual and legal, and was not decided until May 20, 1958, it was timely presented to the Washington Supreme Court. Thus, the provision of Judge Long's order regarding physical custody was preserved as an appealable issue.

Judge Royal's judgment amended or modified, or supplemented, Judge Long's original order. Where a judgment is amended or modified, the amended judgment is the final decree from which the time to appeal must be reckoned. Where a further hearing is granted and a sup-

plemental order made reaffirming the original order, it has been held that the time for taking an appeal begins to run from the date of the supplemental order. 3 Am. Jur. 151, Sec. 437. Judge Long's order was temporary and subject to modification, for the reason that truancy was the only ground upon which the State could acquire and retain jurisdiction of Alta Lee Wold. The truancy was of a continuing nature and might continue, or might disappear at any time. The Washington Supreme Court has reviewed orders very similar to the order of Judge Long, long after the entry, where a subsequent order is entered and review thereof is sought at the proper time. *In re Ross*, 45 Wn.(2d) 654, 277 P.(2d) 335 (1954). Rule 17, Rules on Appeal, Washington Court Rules, provides for the review of such orders (App. G).

2. The State of Washington has no legitimate interest in any of the following topics:

A. The length of a student's hair.

B. Teaching folk dancing.

C. The place where a student eats lunch.

D. Vegetarianism.

E. The teaching of musical instruments.

This contention appears to be one of the self-evident truths when applied to Petitioners' children. As to Topic A, the personal appearance of a pupil, there is no evidence other than that the Petitioners' children were neat, well-mannered and orderly children. Under these facts, the State could have no legitimate interest in regimenting

the children as to personal appearance.

Topic B: The teaching of folk dancing is part of the physical education rites of the Respondent School District (Finding V). By statute in the State of Washington, elementary grade students are to be excused from physical education courses because of religious beliefs. RCW 28.05.030 (App. F). Independently of such a release provision, a school district may not compel a public school student to engage in folk dancing. *Hardwick v. Board of School Trustees,* 54 Cal. App. 696, 205 Pac. 49 (1921).

Topics C and D: No one could maintain that the State has any interest in a student's diet, except where the diet is deficient. The school did not require Petitioners' children to eat the food sold in the school lunchroom. Alta Lee and Freda Mae were, however, coerced to eat their lunches in the school lunchroom. The evidence fails to reveal any interest, or possible interest, which the State of Washington might have in such regimentation. The possibility of a health or cleanliness basis is eliminated by the fact that Freda Mae was permitted (actually compelled) to eat her lunch in the girls' restroom for a long period of time.

Topic E: Alta Lee was excused from music classes when musical instruments were played (St. 143).

This Court has many times enunciated that the freedom to believe is absolute, but that freedom to act on religious beliefs is limited or relative. It is a general or perhaps universal principle that the limitations placed upon free-

dom to act are constitutional only where unchecked freedom of action would impinge upon the rights of others or would interfere with the legitimate functions of government. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L.Ed. 1628 (1943). Where there is no interference the State can have no interest in limiting the individual freedom to act (or to abstain) pursuant to religious beliefs.

The second, third, fourth and fifth questions contained herein are Federal questions of substance in that they involve the question of the right of the State of Washington to criticize or punish a student with respect to religious beliefs, and because they involve the question of the right of the State of Washington to take away parental custody because of religious conflicts caused by the State. The second, third and fourth questions have been decided by the Washington Supreme Court contrary to the decision of this Court. *West Virginia State Board of Education v. Barnette*, supra. The fifth question has never been decided by this court.

3. If the State of Washington does have any legitimate interest in the above topics, that interest is outweighed by the right of freedom of conscience.

The *Barnette* case, *supra*, is analogous to the case at bar in that in both cases the act sought to be compelled or prevented is an act which most persons would consider as nonsectarian, but which a particular student considers as highly sectarian. The requirement of a mandatory flag salute as a condition of school attendance is a much more

reasonable exercise of State authority than the acts exemplified by the conduct of the School District in this case, in the sense that the aim of the State in the *Barnette* case is obviously of a higher and more necessitous order. The national unity or cohesion of sentiment described in the *Barnette* case (and in *Minersville School District v. Gobitis*, 310 U.S. 586, 84 L.Ed. 1375, 60 S. Ct. 1010 (1940)) as being the purpose to be accomplished by the flag salute laws, is of overwhelming importance in contrast to the petty stature of the only possible goals of the Respondent School District in this case. Certainly, if the national unity or cohesion of sentiment sought to be achieved by the flag salute statute is overwhelmed by the conflicting rights of the *Barnette* students, then there is no question but that the same conclusion must follow in this case. All that was required of the school district in the *Barnette* case was to leave the children alone with regard to the flag salute. In this case the School District need merely leave the children alone with respect to the topics which we have heretofore set forth. No harmful result can possibly occur to the School District, and no accommodating activity is required.

4. The conduct of the teachers and principals of Respondent School District constitutes state action, and the Fourteenth Amendment is applicable. This conduct constitutes a deprivation of religious liberty without due process of law, and is therefore an unwarranted overreaching.

Teachers in the public schools of the State of Wash-

ington are armed with the following authority:

> "RCW 28.58.200. Expulsion of Pupils. All pupils who attend the common schools must comply with the regulations lawfully established for the government of the schools, must pursue the required course of studies, *and must submit to the authority of the teachers.* Continued and willful disobedience or open defiance of authority of the teacher shall constitute good cause for expulsion from school" (Emphasis supplied).

The conduct of the teachers and principals occurred in the school, during school hours and involved school matters. It can hardly be argued that the teachers and principals were not acting as agents of the State of Washington in performing those acts.

Finding of Fact V makes it clear that the conduct of the teachers and principals was intended to coerce or compel petitioners' children to abandon those beliefs which were peculiarly sectarian to them, and to conform to the ideas of their teachers with regard to the topics heretofore set forth. No objection was ever made by the School District as to the propriety of Finding of Fact V, and it is one of the established facts of the case. Rule 43, Rules on Appeal, Washington Court Rules (App. G).

The Respondent School District cannot justify its conduct as being non-coercive on the ground that it involves non-sectarian matters. For this Court to permit such justification would be to ignore the essence of the First Amendment by disaffirming that there is a right to a minority belief. The only possible justification for the con-

duct of the respondent is on the ground of public necessity, and, under the *Barnette* case, that ground does not exist.

5. Were Alta Lee and Freda Mae justified in withdrawing from school?

Mrs. Wold testified that the girls were initially taken out of school with the approval of Mr. Breuer, Director of Special Education for the School District, on the condition that a method of education equivalent to that given in the School District was furnished to petitioners' children. Subsequently, Mr. Breuer withdrew his consent. The issue really is whether the Wold children were justified in not returning to school upon demand.

If, as we urge, the State of Washington unlawfully deprived Petitioners and their children of their right to religious freedom, then were not the children justified in withdrawing from school as a matter of self-defense? This is a fundamental question which, so far as we have been able to ascertain, has never been determined by this or any other appellate court. The following factors ought to be considered by the Court in determining this issue;

(1) The individual right involved is one of the most important rights known to mankind.

(2) The assault upon this right was direct. It involved the discipline and criticism of school authorities, and the loss of basic rights by the orders of the Juvenile Court.

(3) The assault was continuous over a period of time, not merely an isolated incident.

(4) There was no practicable legal remedy available to Petitioners. It is now the established law of this State that the Wold children were not excused from compulsory school attendance by reason of these religious conflicts. *State ex rel. Shoreline School District v. Superior Court* 155 Wash. Dec. 175, 346 P.(2d) 999 (1959). Like other courts, the Washington court does not create new law, but merely pronounces what the law has always been.

Nor would a holding in favor of this proposition be an invitation to parents to permit truancy. No child would be entitled to remain out of school unless the Juvenile Court found that a legitimate conflict existed between the sincere religious beliefs of the child or parent and the school practices or policies. The Juvenile Court would lose none of its authority to *correctly* determine such issues. The child would be entitled to remain out of school only in the event that the acts sought to be compelled (or prevented) by the school were overweighed by the individual rights of freedom of conscience. When a school district is made aware that its practices constitute a deprivation of freedom of conscience, it is the duty of the school district to cease such practices in order to accord freedom of conscience to the student. This the Respondent School District has never done. Where the school district refuses or fails to do this, it is the school district who has breached a duty, and not the student.

In the State of Washington the common schools are free. Washington Constitution, Article IX, § 1 (App. E); RCW 28.01.060 and RCW 28.58.190 (App. F); *School District No. 20 v. Bryan*, 51 Wash. 501, 504, 99 Pac. 28, 30 (1909). Thus the relationship between the student and the State involves both the *right* to attend the public schools, and the *duty* to so attend. It is implicit that in such a relationship the school authorities cannot attach an illegal condition upon school attendance. The school authorities cannot offer to a student or parent a choice either of discipline for the rightful exercise of freedom of conscience, or in the alternative the expense of private school, or as a second alternative a deprivation of parental custody by means of the Juvenile Court in the event that neither of the first two choices are palatable.

None of the cases cited in the opinion of the Washington Supreme Court support their decision that Petitioners' children were not excused from compulsory school attendance. The Washington Supreme Court assumed erroneously that school attendance was *per se* repugnant to the Wolds' religion. Finding of Fact IV and V make it clear that such was not the case, and that, as argued heretofore, the State had no interest at all in the area of the conflicts. *Commonwealth v. Renfrew*, 332 Mass. 492, 126 N.E.(2d) 109 (1955), involved the prosecution of Buddhist parents for removing their children from school. Massachusetts law requires a school to open with Bible reading. Parents can request that their children be excused, and their request will be granted. The

Massachusetts Court held that the children were not compelled to participate in Bible reading and that there was no deprivation of freedom of religion. The decision is probably contrary to the position of this Court. *People of State of Illinois ex rel. McCollum vs. Board of Education*, 333 U.S. 203, 68 S. Ct. 461, 92 L.Ed. 648 (1948). In *Commonwealth v. Smoker*, 177 Pa. Sup. 435, 110 A.(2d) 740 (1955), Amish parents were prosecuted for removing their children from school. The Amish believed that children should not attend school after the eighth grade or past the age of 14. *Commonwealth v. Beiler*, 168 Pa. Sup. 462, 79 A.(2d) 134 (1951) was a similar case. Both the *Smoker* and *Beiler* cases involved religious beliefs such that school attendance was *per se* repugnant to the religious beliefs. In *People v. Donner*, 302 N.Y. 857, 100 N.E.(2d) 48 (1951), the defendant parents' religion forbade "formal systematic secular education." The defendant parents were properly convicted of violating the compulsory school attendance law. In *Shapiro v. Dorin*, 199 Misc. 643, 99 N.Y. Supp.(2d) 830 (1950), the defendant parents were prosecuted for violating the compulsory school attendance law. The defendants' children attended a Jewish school not recognized by the Jewish Education Committee of New York, which supervised secular education in Hebrew parochial schools. The basic instruction given in the school was in the Bible, the Talmud and elementary Jewish law. The learning of arithmetic, spelling and other basic subjects appeared to be incidental. The teacher was not qualified, and instruction was not in

English. The defendants believed that Jewish religious principles must control all law. The case involved a total conflict between secular and sectarian ideas, and the parents were properly convicted. In *Rash v. Commonwealth*, 188 Va. 224, 49 S.E.(2d) 342 (1948), the defendants believed it to be improper for their children to attend public school, because public schools were too worldly. The defendants tutored their children at home, and were properly convicted.

CONCLUSION

The judgment of the Washington Supreme Court, insofar as it affirms the orders and judgment of the Juvenile Court, making Alta Lee Wold a ward of the Juvenile Court, should be reversed. The Juvenile Court acted erroneously in the first instance in depriving Petitioners of parental custody.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, on the Relation of Shoreline School District No. 412,

Plaintiff and Relator,

v.

THE SUPERIOR COURT FOR KING COUNTY, Raymond Royal, Judge,

Respondent.

No. 34772
En Banc
December 3, 1959

Certiorari to review a judgment of the Superior Court for King County, No. 24823, Royal, J., entered May 20, 1958, upon findings in juvenile proceedings, adjudicating a minor to be a dependent child and a ward of the court. Reversed in part.

Charles O. Carroll and Anthony Savage, Jr., for relator.

Murray B. Guterson, for respondent.

Ott, J.—William and Maude Wold are husband and wife, and have been residents of the State of Washington since August, 1952. Alta Lee Wold, their daughter, was born June 6, 1945. Prior to March 14, 1955, she was regularly enrolled as a grade school student at the Ronald public school in Shoreline school district No. 412 in King County. On that date, her parents withdrew her from the fourth grade. After several demands were made upon the parents by the truant officer of the school district that Alta Lee attend a public or private school, as required

by Laws of 1909, chapter 97, subchapter 16, p. 364, *et seq.*, a petition was filed in the juvenile court for King County which alleged that Alta Lee Wold was a delinquent child, because of her violation of the compulsory school attendance law of this state, and that William and Maude Wold, her parents, were contributing to her delinquency.

At the hearing upon the petition, the parents admitted that Alta Lee had not been attending public school, and that she had not been excused from attendance by any school authority. Their defense was that Alta Lee's mother had graduated from a Colorado high school in 1937; that Alta Lee was being taught the regular public grade school subjects by her mother in their home, and that this constituted a private school. A further defense was that they were members of the Seventh Elect Church in Spiritual Israel; that eating meat, fish or fowl, listening to music, and dancing were forbidden by the tenets of their church, and that, to be present where meat, fish or fowl was served or music played violated their religious belief.

After considering the evidence, the juvenile court found that the "school" Alta Lee was attending did not constitute a private school as contemplated by law; that, although their church tenets were violated by public school attendance, this was not a defense to violation of the compulsory school attendance law; that Alta Lee was a dependent and delinquent child, and that the parents, William and Maude Wold, were contributing to her dependency and delinquency.

August 8, 1955, the court adjudicated Alta Lee to be a dependent child and a ward of the juvenile court, but permitted her to return in the physical custody of her parents, conditioned upon her parents' providing, prior to September 1, 1955, a method for her education in conformity with state law.

September 14, 1955, the parents failed to appear and answer a petition relative to their compliance with the August 8, 1955, judgment, and, September 19, 1955, the court entered an order continuing the cause "Subject to Call."

The Wolds continued to disregard the judgment of the court, and on May 13, 1957, Shoreline school district No. 412 again petitioned the court for a review of the August 8, 1955, dependency order and for compliance, on the part of the parents and Alta Lee Wold, with the compulsory school attendance law.

The cause was heard before another trial judge, as the former judge voluntarily disqualified himself. Further evidence was introduced. At the close of the trial, the court found that "All of the facts and circumstances which compelled the court to assume jurisdiction over Alta Lee Wold on August 8, 1955, still exist," and that Alta Lee was still a dependent child and a ward of the court.

The court further found that the mother's teaching methods had improved in the two and one-half years she had been maintaining the home school; that the legislature had not provided standards for private schools, and that, since Alta Lee was receiving a book learning com-

parable to that of the public schools, she was attending a private school as contemplated by law.

Following the entry of judgment, the district was granted a review in this court by certiorari.

The principal assignment of error relates to the court's finding that the Wolds' home school constituted a qualified private school as contemplated by law.

We agree with relator's contention that the court's findings are inconsistent. It found that Alta Lee Wold was not attending a public or private school, as provided by law, and was therefore a dependent child. After so finding, it then found that the home school which she was attending, and which caused her to be adjudicated a dependent child, was a qualified private school. In other words, the juvenile court obtained jurisdiction of Alta Lee Wold and made her a ward of the court because the court found that she was not attending a qualified private school, as contemplated by law. After obtaining jurisdiction of Alta Lee on this basis, the court then found that the welfare of its ward would best be served by her attending the same unqualified school because its method of education was "in conformity with the laws of this state."

The juvenile court's decision is inconsistent with *State v. Conourt*, 69 Wash. 361, 124 Pac. 910 (1912) (to which decision we adhere), wherein this court held that a father teaching his children at home was doing so in violation of the compulsory school attendance law. In the cited case, the court said (p. 363):

"... We do not think that the giving of instruction by a parent to a child, conceding the competency of the parent to fully instruct the child in all that is taught in the public schools, is within the meaning of the law 'to attend a private school.' Such a requirement means more than home instruction; it means the same character of school as the public school, a regular, organized and existing institution making a business of instructing children of school age in the required studies and for the full time required by the laws of this state. The only difference between the two schools is the nature of the institution. One is a public institution, organized and maintained as one of the institutions of the state. The other is a private institution, organized and maintained by private individuals or corporations. There may be a difference in institution and government, but the purpose and end of both public and private schools must be the same—the education of children of school age. The parent who teaches his children at home, whatever be his reason for desiring to do so, does not maintain such a school. Undoubtedly a private school may be maintained in a private home in which the children of the instructor may be pupils. This provision of the law is not to be determined by the place where the school is maintained, nor the individuality or number of the pupils who attend it. It is to be determined by the purpose, intent and character of the endeavor..."

Article IX, Sec. 1, of our state constitution, provides that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, ..." The legislature, in compliance with this constitutional mandate, provided for compulsory school attendance for all children between the ages of eight and sixteen years (unless excused from attendance for reasons not here material) at either a public or private school.

Laws of 1909, chapter 97, subchapter 16, p. 364, *et seq.* In order that school attendance be assured at either a public or private school, the legislature required that a census of all school children in each district be furnished to school authorities. All teachers are required to report all cases of truancy. Laws of 1909, chapter 97, subchapter 16, sec. 6, p. 367. The legislature authorized the attendance officer of the district to investigate school attendance of all children between the ages of eight and fifteen years, and to institute proceedings against violators of the compulsory school attendance law. Laws of 1909, chapter 97, subchapter 16, sec. 4, p. 366.

From the cited sections of the law, it is apparent that the legislature, in conformity with the constitutional mandate, required compulsory school attendance of all children between the ages of eight and sixteen years (with certain exceptions not here material) in either a public or qualified private school, and vested authority in designated officers to enforce this law.

Although the trial court found that there are no legislative standards governing private schools in this state, such a conclusion is not supported by law. A school is an institution consisting of a teacher and pupils, irrespective of age, gathered together for instruction in any branch of learning. *Weisse v. Board of Education of City of New York*, 178 Misc. 118, 32 N.Y.S.(2d) 258 (1941), *Board of Education of City School District of City of Cleveland v. Ferguson*, 68 Ohio App. 514, 39 N.E.(2d) 196 (1941). The three essential elements of a school are (1) the

teacher, (2) the pupil or pupils; and (3) the place of institution. If the alleged school has no teacher, then it does not qualify as a school. There is one standard which the legislature made applicable to all schools, both public and private, and that standard is that the teacher must be qualified to teach and hold a teaching certificate. Laws of 1909, chapter 97, subchapter 4, Art. VII, sec. 1, p. 306, provides:

> "No person shall be accounted as a qualified teacher within the meaning of the school law, who is not the holder of a valid teacher's certificate or diploma issued by lawful authority of this state."

The Wolds had the place and the pupil, but not a teacher qualified to teach in the state of Washington. Their alleged private school did not legally qualify as such.

The legislature granted to the county or district superintendent of schools the power to excuse one who was not attending public school from the penalties of the compulsory school attendance act, provided such child was attending an "approved private school." Laws of 1909, chapter 97, subchapter 16, sec. 1, p. 364, provides:

> "All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child between eight and fifteen years of age (being between the eighth and fifteenth birthdays), or of any child between fifteen and sixteen years of age (being between the fifteenth and sixteenth birthdays) not regularly and lawfully engaged in some useful and remunerative occupation, shall cause such child to attend the public school of the district, in which the child resides, for the full time when

such school may be in session or to attend a private school for the same time, unless the superintendent of the schools of the district in which the child resides, if there be such a superintendent, and in all other cases the county superintendents of common schools, shall have excused such child from such attendance because the child is physically or mentally unable to attend school or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the public schools of this state as provided by the course of study of such school, or for some other sufficient reason. Proof of absence from public schools or *approved private school* shall be *prima facie* evidence of a violation of this section." (Italics ours.)

The legislature further required persons who were allegedly maintaining a private school to report annually to the county superintendent of schools. Laws of 1933, chapter 28, sec. 14, p. 172, provides:

"It shall be the duty of the administrative or executive authority of every private school in this state to report to the county superintendent of schools on or before the 30th day of June in each year, on a blank to be furnished, such information as may be required by the superintendent of public instruction, to make complete the records of education work pertaining to all children residing within the state."

Private schools must also report annually to the state superintendent of public instruction. Laws of 1909, chapter 97, subchapter 2, sec. 3, pp. 231, 233, provides:

"The powers and duties of the Superintendent of Public Instruction shall be: . . .

"Tenth. To require annually, on or before the 15th day of August, of the president, manager, or prin-

cipal of every educational institution in this state, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports; and it is hereby made the duty of every president, manager or principal, to fill up and return such blanks within such time as the Superintendent of Public Instruction shall direct."

Although the legislature did not expressly provide that *all* of the legislative standards for a public common school must be maintained by a private school in order to qualify as such, it is reasonable to assume that the legislature intended that the one to whom it had delegated the power and authority to determine whether a child was attending a *qualified* private school would be guided in that decision by the minimum standards required by the legislature for a public common school. For example, Laws of 1909, chapter 97, title I, subchapter 1, sec. 2, p. 230; Laws of 1909, chapter 97, title III, subchapter 1, sec. 2, p. 262; Laws of 1909, chapter 97, title III, subchapter 4, sec. 3, p. 286, as amended by Laws of 1915, chapter 71, sec. 1, p. 246, Laws of 1919, chapter 90, sec. 4, p. 210, and Laws of 1955, chapter 8, sec. 1, p. 10; Laws of 1919, chapter 89, sec. 1, p. 205; Laws of 1921, chapter 56, p. 171, as amended by Laws of 1939, chapter 21, p. 51, and Laws of 1955, chapter 20, sec. 3, p. 159; Laws of 1923, chapter 76, p. 236; Laws of 1925, Ex. Ses., chapter 134, p. 337; Laws of 1941, chapter 203, sec. 1, p. 597.

Laws of 1933, chapter 28, sec. 14, p. 172, *supra*, required reports by private schools to the county superintendent which are to contain such information as is required "to make complete the records of education work pertaining

to *all* children residing within the state." (Italics ours.) The information contained on these forms, relative to the standards of the school, gives the superintendent the information needed to exercise his discretion as to whether or not the alleged school in fact *qualifies* as such, and, hence, whether children attending it may be excused from attendance at public school. Under the compulsory school attendance law, the legislature delegated to the district or county superintendent the authority to determine the minimum standards for a private school, in order that, in the exercise of his discretion, attendance at a qualified private school may be approved.

In the instant case, the Wolds' alleged private school did not have a qualified teacher. The Wolds did not report that their daughter was attending a private school, nor did they attempt in any manner to qualify their alleged school as a private school with the person whose duty it was to exercise his discretion in granting the waiver to students of public school attendance.

We find no merit in the contention of the Wolds that they are excused from the penalties of the compulsory school attendance law because school attendance is repugnant to their religion. *Commonwealth v. Renfrew*, 332 Mass. 492, 126 N.E.(2d) 109 (1955); *Commonwealth v. Smoker*, 177 Pa. Super. Ct. 435, 110 A.(2d) 740 (1955); *Commonwealth v. Beiler*, 168 Pa. Super. Ct. 462, 79 A.(2d) 134 (1951); *People v. Donner*, 302 N.Y. 857, 100 N.E.(2d) 48 (1951); *Shapiro v. Dorin*, 199 Misc. 643, 99 N.Y.S.(2d) 830 (1950); *Rice v. Commonwealth*, 188

Va. 224, 49 S.E.(2d) 342, 3 A.L.R.(2d) 1392 (1948).

Although the freedom to believe remains absolute, religious beliefs, whatever they may be, are not a legal justification for violation of positive law. See *State ex re. Holcomb v. Armstrong*, 39 Wn.(2d) 860, 239 P.(2d) 545 (1952).

The judgment of the trial court is affirmed in the following particulars: Alta Lee Wold is a dependent child because she is in violation of the compulsory school attendance act, and will remain a ward of the court until such time as she is purged of dependency by attendance at either a public or qualified private school.

The judgment is reversed as to that portion thereof which adjudicates the Wold home school to be a method of education that conforms with state law. The cause is remanded with instructions to enter judgment in accordance with the views herein expressed. Neither party will recover costs.

Weaver, C.J., Mallery, Donworth, and Foster, JJ., concur.

Hunter, J. (dissenting)—This is not an action between the school district and the parents, as indicated in the majority opinion. In August, 1955, Alta Lee Wold was adjudicated to be a ward of the juvenile court, consequently the parents no longer have control over this minor child; therefore this review is strictly a controversy between the school district and the juvenile court.

The trial court found that the minor child was receiving

education in the home equivalent to the standards maintained in the public schools; that the welfare of the child would best be served by continuing her education in the home, in the manner which the parents are now providing. The findings and judgment provided in part:

> "Presently, a full school curriculum has been established in the Wold residence. The curriculum (save only for those subjects which are inconsistent with the Wolds' religious beliefs) is patterned after that followed for the particular grade level in their school district. Regular class periods on various subjects are held at regularly scheduled hours each day, five days a week, for a full school year, the same as maintained in the school district in which the children reside. Full and complete attendance records are kept. The books and materials used compare favorably with those employed in the public school district. The teaching method used by Mrs. Wold compares favorably with those employed by fully accredited teachers in the school district. In many respects the results obtained by this method of education, insofar as Alta Lee Wold is concerned, is equal to that of a superior child of her grade level in the public schools of her school district. The method of education in the Wold residence is equal, if not superior, to the standards maintained in many of the public school districts of the State of Washington.
>
> "
>
> . . .
>
> "The Wold home, save for the educational factor, is completely normal in every respect. The Wold children live a completely normal life and are well cared for and given every advantage possible by their parents. The entire family sincerely believes in the teachings of their church and does its utmost to live up to their religious beliefs."

The court concluded in part:

"In accordance with the above, it is the conclusion of this court that at the present time at the present grade level Alta Lee Wold is being furnished with a method of education in conformity with the laws of this state *and that the welfare of said child will best be served by not revoking the order* of August 8, 1955." (Italics mine.)

Judgment was entered as follows:

". . . That Alta Lee Wold is now and will remain a ward of the court in temporary custody of her parents, Maude Wold and William Wold, subject to the probationary supervision of an officer of the juvenile court and subject to the further order of the court upon the condition that said parents shall *continue* to *provide* the said child a method for the education of said child which conforms to the laws of the State of Washington." (Italics mine.)

The school district has appealed contending the juvenile court erroneously determined that the instruction of the Wold child in the home is equivalent to a private school.

This contention is a confusion of the issue resulting from the finding of the juvenile court which was, in effect, that the education of the minor in the home was equivalent to the education she would receive in a private school. This finding was not necessary for the determination of the real issue before the court, that issue being what was best for the welfare of this particular child. The juvenile court did find it was for the welfare of this particular child that she continue to receive her education in the home, and that she remain under the continued probationary supervision of the juvenile court.

The school district takes the position that the education

furnished the Wold child in the home is not equivalent to a private school; that the compulsory school attendance law, RCW 28.27.010, has been violated and the juvenile court has exceeded its jurisdiction in failing to comply with this statute. This completely misses the ultimate issue as to what is best for the welfare of the child under all of the circumstances of this case. This minor, having been determined a dependent and delinquent child, is clearly within the jurisdiction of the juvenile court which may enter any order for the promotion of the welfare of such a child.

RCW 13.04.090 of the juvenile act provides:

> ". . . After acquiring jurisdiction over any child, the court shall have power to make an order with respect to the custody, care or control of such child, or *any order*, which in *the judgment* of the court, *would promote the child's health and welfare*. . . ." (Italics mine.)

On many occasions this court has interpreted this act to give the juvenile court the broadest of discretion in planning for the welfare of minors within its jurisdiction. If the relator prevails, the juvenile courts of this state will hereafter be imposed with a new limitation upon the exercise of their discretion in planning for a child's welfare by the requirement of compliance in every instance with the compulsory school attendance law. Such a limitation would be highly detrimental to the efficient functioning of the juvenile court and is, in my opinion, beyond the contemplation of the juvenile court act.

The fallacy of relator's position can be illustrated by

considering some of the routine problems which confront a juvenile court: The delinquent or dependent child within the compulsory school attendance age who, by his prolonged absence from school, is too far behind his age group to permit a school adjustment; or such child who is mentally incapable of adjusting to a public school; or such child who is a criminal offender; or such child who is incorrigible and refuses to submit to school discipline; or, as in this case, such child who, because of certain religious principles, refuses to obey instructions and is a misfit in any school.

The compulsory school attendance law does not contemplate that every child of compulsory school attendance age must come under the operation of the statute. The legislature wisely made provision that exceptions be provided where its operation would be impractical. RCW 28.27.010 provides in part:

> "The superintendent of the schools of the district in which the child resides, or the county superintendent if there is no district superintendent, may excuse a child from such attendance if the child is physically or mentally unable to attend school, or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the *public schools or for any other sufficient reason* . . ." (Italics mine.)

It would be unreasonable to conclude that the legislature granted to the school authorities the power to excuse the operation of the statute, but withheld the same power from the juvenile court when it has authorized the juvenile court to make any order to promote the welfare of minors

within its jurisdiction. Moreover, by permitting the relator to prevail, the juvenile court will hereafter be required to obtain permission from the proper school authorities to remove its wards from the operation of the compulsory school attendance statute. Such a result presumes that the legislature intended to give the school authorities the power to control a function of the superior court. It is inconceivable that this was the legislative intent.

The above discussion further illustrates that assuming *arguendo* the juvenile court in the instant case made an incorrect determination of what is and what is not a private school, the compulsory school attendance statute is nevertheless inoperative as to this minor by reason of the juvenile court having determined it is for the best welfare of this particular child to continue receiving her education from her parents in the home. In my opinion, the juvenile court clearly had the jurisdiction under RCW 13.04.090 to make this determination and did not abuse its discretion in so doing.

In the instant case, any fear that the relator school district may have that the finding of the juvenile court defines a private school should be allayed, since the finding relates only to this particular child in the court's consideration of her welfare. This is not a case in which the requirements for a private school are being tested, but is clearly a case to determine whether or not a juvenile court judge may plan for the welfare of his wards without being limited by the compulsory school attendance law of this state.

The judgment of the trial court should be affirmed.

Rosellini, J., concurs with Hunter, J.

Hill and Finley, JJ. (concurring)—We concur in the conclusion of the dissent that the judgment of the trial court should be affirmed.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY—JUVENILE COURT

IN RE THE WELFARE OF ALTA LEE WOLD. } No. 24823
Judgment

THIS MATTER and the cause having been submitted for decision and the court having made its findings of fact and conclusions of law,

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Alta Lee Wold is now and will remain a ward of the court in temporary custody of her parents, Maude Wold and William Wold, subject to the probationary supervision of an officer of the juvenile court and subject to the further order of the court upon the condition that said parents shall continue to provide the said child a method for the education of said child which conforms to the laws of the State of Washington.

SIGNED IN OPEN COURT this 20th day of May, 1958.

S/RAYMOND A. ROYAL
Judge

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY—JUVENILE COURT

IN RE THE WELFARE OF ALTA LEE WOLD. } No. 24823
Memorandum Decision

This matter came on for hearing before this department on petition dated May 13, 1957, of one of the assistant probation officers of the Juvenile Court for King County. The petition seeks to have this court inquire into and review the situation of the minor child Alta Lee Wold and to enter such order as is for her welfare. Leo W. Breuer, a representative of the Shoreline School District, joins in the request by reason of a supplemental petition dated February 4, 1958.

The Juvenile Court of King County obtained jurisdiction over this minor child by virtue of an order of the Honorable William G. Long, the designated Juvenile Court Judge for King County, dated the 8th day of August, 1955. This order determined that this minor child is a dependent and delinquent child. It has never been revoked and remains in full force and effect.

The determination of dependency and delinquency was based upon the Juvenile Court Act (RCW 13.04.010). The court found that this child and her older sister were withdrawn from the Shoreline School District by the parents. The sole reason given for the withdrawal was that attendance at the public school offended the religious tenets of the church to which the family belonged. The

child's mother commenced a course of home instruction and contended that this satisfied the compulsory education laws of this state (RCW 28.27.010). The order of August 8, 1955 determined that the instruction then being given by the mother did not constitute attendance at a public or private school. The contention by Mr. and Mrs. Wold to the effect that they maintained an established private parochial school in their home was rejected by the court under the facts then existing.

Judge Long's order of August 8, 1955 deprived the parents of the custody of this child and made her a ward of the court. As a ward of the court the child was placed in the temporary care of its parents, subject to probationary supervision. The order contained a provision that the parents shall provide the child with a method of education which is in accordance with the laws of the State of Washington.

The parents appealed to the Supreme Court of the State of Washington. The appeal was dismissed for lack of jurisdiction by an order dated the 18th day of January, 1956. There has been no appeal taken by the school authorities.

The matter has been dormant since September 19, 1955, on which date Judge Long ordered that the proceedings be continued subject to call. Upon the present matter being brought on for review on the current petition, Judge Long disqualified himself and referred the matter to the Presiding Judge of King County for assignment. At the commencement of the present proceedings before this

department upon motion, the oldest girl, Freda Mae Wold, was dismissed because she had passed the age subject to compulsory education.

This department proceeded to hear evidence offered by the interested parties so as to be able to determine what order shall be for said child's welfare. The only evidence in the present hearing which points to different facts than existed at the time of the order of August 8, 1955, relate to the method of education now being provided to Alta Lee Wold by her parents and the results thereof, and the fact that the girl is two and a half years older.

The evidence in these present proceedings establishes that Mrs. Wold has substantially improved her method of education. The testimony was uncontradicted that she maintains regular class periods on various subjects at regular scheduled hours each day, five days a week, for a full school year, the same as maintained in the school district in which her child resides. Full and complete attendance records are kept and maintained for public inspection. A set curriculum patterned after that for the particular grade level in their school district is followed. It follows a comparable time schedule. The books and materials employed compare favorable with those used in the public schools.

The parents brought into court the text books, examination questions, the answers to the examination questions, the various educational tools and devices for observation by the court, the various parties and any expert witnesses.

It was established by the testimony of a qualified educator from the Seattle school system that the results produced by the method for the education of this child were at least equal to a superior child in the Seattle system. He further testified that it was superior to the standards maintained in many of the public school districts lawfully organized and established in conformity with the laws of the State of Washington. There was no testimony to the contrary.

There is no statutory provision defining a method of education in this state. We are forced to rely upon the evidence in this case as to what is the common practice in the schools throughout the State of Washington. The decisions of the various courts of record throughout this country and in the State of Washington are of some assistance upon the general criterion of a school or method of education.

The case of *State v. Cournot*, 69 Wash. 361, is the only case in Washington dealing with the subject defining either a school or a method of education. While the case holds that mere instruction by and of itself by a parent in the home does not constitute a private school, it goes on to define other related principles as follows:

> "Undoubtedly a private school may be maintained in a private home in which the children of the instructor may be pupils. This provision of the law is not to be determined by the place where the school is maintained, nor the individuality or number of the pupils who attend it. It is to be determined by the purpose, intent and character of the endeavor."

Based upon the evidence before this department it is concluded that Mrs. Wold is now following a method of education which uses a curriculum virtually identical with any superior school district maintained in the State of Washington. She is producing results equal to a superior student in any superior school district of this state. Whether or not Mr. and Mrs. Wold maintain a private school within the meaning of law is not before the court. That was determined by the order of August 8, 1955, and we are petitioned to review this child's circumstances as affected by that order.

The fact that Mrs. Wold has no teacher's certificate permitting her to teach in the public schools has no bearing on the question before the court. Nowhere in the statutes of this state is there a requirement that a private school must employ teachers having a certification qualifying them to teach in the public schools. The order of August 8, 1955, has no such requirement.

The reasoning expressed by the Indiana Supreme Court in the case of *State v. Peterman*, 32, Ind. App. 665, 70 N.E. 550, set forth the prevailing view that it is the results that count:

> "A school, in the ordinary acceptation of its meaning, is a place where instruction is imparted to the young. If a parent employs and brings into his residence a teacher for the purpose of instructing his child or children, and such instruction is given as the law contemplates, the meaning and spirit of the law has been fully complied with. This would be the school of the child or children so educated, and

would be as much a private school as if advertised and conducted as such. We do not think that the number of persons, whether one or many, makes a place where instruction is imparted any less or more a school."

* * *

"Its purpose is 'to secure to the child the opportunity to acquire an education,' which the welfare of the child and the best interests of society demand. The result to be obtained, and not the means or manner of obtaining it, was the goal which the lawmakers were attempting to reach. The law was made for the parent who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse, and so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools of the state."

A representative of the Shoreline School District testified, with reference to the actual practice of enforcing the compulsory education law, that no inquiry was made into the qualifications of the teachers in a private or parochial school, their curricula, or anything else bearing upon their method of education. He further testified that he knew of no statutes bearing upon the standard for him to apply, nor did he know of any administrative ruling issued by any school superintendent or school district available for his guidance in enforcing the compulsory education law. He testified that it would not be his practice to take any action against a child attending a one-room school with one teacher. Nowhere from his testimony could it be inferred that on any occasion except in the instance of the Wold children did he or any other official

of the Shoreline School District check into or inquire about the qualifications of the teacher in a private school, the curricula, the method of teaching, the effectiveness of the over-all program. Therefore it can be concluded that it is the common practice of the school officials, in the school district where the Wold children reside, not to make any inquiry as to the qualifications, methods, standards, curriculum or educational qualifications of a private or parochial school nor of the qualification of their teachers.

In summary the law of this state defining a method of education must be ascertained by reference to the following:

1. Methods customarily followed throughout the state by public schools;

2. Common law references to methods of education and related topics;

3. Actual practices followed by the affected school district in enforcing the compulsory education laws.

It is the conclusion of this court that at the present time at the present grade level Alta Lee Wold is being furnished a method of education in conformity with the laws of this state. Therefore the provisions of the commitment order of August 8, 1955, are being complied with. All of the facts and circumstances compelling the court to assume jurisdiction over the child on that date still exist. The conditions of said child remaining unchanged, the welfare of said child will be best served by not revoking that order. Therefore, Alta Lee Wold will remain a ward

of the court in the temporary custody of her parents, Maude Wold and William Wold, subject to the probationary supervision of an officer of the Juvenile Court and subject to the further order of court, and with the proviso that said parents shall continue to provide to said child a method for the education of said child which conforms to the laws of the State of Washington.

Dated the 11th day of April, 1958.

s/ RAYMOND ROYAL
Judge

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING—JUVENILE COURT

IN RE THE WELFARE OF FREDA MAE WOLD, ALTA LEE WOLD. } No. 24823 Order

This matter, of the welfare of Freda Mae Wold, a child born on November 7, 1941, and Alta Lee Wold, a child born on June 6, 1945, having come on regularly for hearing before the above-entitled Court on the 1st day of June, 1955, by continuance upon the Petition of Leo W. Breuer of the Shoreline Public Schools; this hearing having been advanced from the 1st day of June, 1955; the said Leo W. Breuer being present and sworn; Frederick W. Post, Attorney at Law, appearing as Counsel for Maude Wold and William Wold, parents of said children; Jane Baker, an officer of this Court and Helen R. Harris, Casework Supervisor, being present; the Chief Probation Officer appearing in behalf of said children; the Court, being fully advised in the premises, and Exhibit Number 1 having been offered and admitted in evidence; the matter was then continued for submission of brief and the Court taking the matter under advisement; Counsel having submitted his brief; the Court, having considered the brief, and the Affidavit of Maude Wold, said mother, and having considered the law and the evidence in respect to this matter, finds that said children Freda Mae Wold and Alta Lee Wold are both

dependent and delinquent within the meaning of the law; that said parents are guilty of contributing to the dependency and delinquency of said children; that the welfare of both of said children demands that they be made wards of the Court under supervision; and removed from the custody of said parents unless prior to September 1, 1955, said parents provide a method for the education of said children in conformity with state law:

IT IS THEREFORE ORDERED that FREDA MAE WOLD and ALTA LEE WOLD be and remain wards of this Court in the custody of their parents, Maude Wold and William Wold, subject to the Probationary Supervision of an officer of this Court and subject to the further order of this Court; and with the understanding that said children will be removed from the custody of said parents unless, prior to the 1st day of September, 1955, said parents provide a method for the education of said children in conformity with the laws of the State of Washington.

Done in open court this 8th day of August, 1955.

WILLIAM LONG
Judge

APPENDIX E

WASHINGTON CONSTITUTIONAL PROVISIONS

ARTICLE IX

Sec. 1 PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

APPENDIX F

PROVISIONS OF REVISED CODE OF WASHINGTON

RCW 28.01.060 (Laws of 1909, p. 261, sec. 1):

Common Schools: Common schools are schools that are maintained at public expense and under the control of boards of directors.

RCW 28.05.030 (Laws of 1919, chapter 89, sec. 1):

Physical education in elementary grades. For a period averaging at least twenty minutes in each school day, every pupil attending the first eight grades of the public schools of the state, shall receive as part of the required instruction, such courses in physical education as shall be prescribed by the state board of education: *Provided*, That individual pupils or students may be excused on account of physical disability or religious belief.

RCW 28.27.010 (Laws of 1909, p. 364, sec. 1):

School attendance through eighth grade compulsory. All parents, guardians and other persons having immediate custody of any child between eight and fifteen years

of age (being between the eighth and fifteenth birthdays), or of any child between fifteen and sixteen years of age not regularly and lawfully engaged in some useful and remunerative occupation (being between the fifteenth and sixteenth birthdays), shall cause such child to attend the public school of the district in which the child resides for the full time when the school is in session or to attend a private school for the same time.

The superintendent of the schools of the district in which the child resides, or the county superintendent if there is no district superintendent, may excuse a child from such attendance if the child is physically or mentally unable to attend school, or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the public schools or for any other sufficient reason. Proof of absence from the public schools or an approved private school shall be *prima facie* evidence of a violation of this section.

RCW 28.58.190 (Laws of 1909, p. 261, sec. 1):

What children may attend schools. Every common school shall be open to the admission of all children between the ages of six and twenty-one years residing in the school district.

APPENDIX G

Provisions of Washington Court Rules

Rules on Appeal

Rule 9. Computation of Time.

The time within which acts are to be done, as provided in these rules, shall be computed by excluding the first and including the last day. If the last day is a Saturday or Sunday or a holiday the act must be completed on the next business day.

Rule 17. What May Be Reviewed.

Upon an appeal from a judgment, the Supreme Court will review any intermediate order or determination of the superior court which involves the merits and materially affects the judgment, appearing upon the record sent from the superior court.

Rule 43. Errors Considered.

• • • In appeals from all actions at law or in equity tried to the court without a jury, the findings of fact made by the court will be accepted as the established facts in the case unless error is assigned thereto. • • •

Rule 50. Petitions for Rehearing.

• • •

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.